*Supreme Court of Illinois.*

PHILIP F. SCANLAN ET AL. *v.* THOMAS COBB.

Where a purchase from an insane person is made and a conveyance obtained in good faith, for a sufficient consideration, and without knowledge of the insanity, the consideration must be returned before the conveyance will be avoided.

Where persons apparently of sound mind and not known by the adverse party to be otherwise, enter into a contract which is fair and bona fide and which is executed and completed, and the property which is the subject of the contract cannot be restored so as to put the parties in *statu quo*, such contract cannot be set aside either by the alleged lunatic or those who represent him.

The fact of insanity must be clearly established in order to avoid a conveyance.

In suits respecting trust property brought either by or against the trustees, the *cestuis que trust*, as well as the trustees, are necessary parties, and when the suit is by or against the *cestuis que trust* the trustees also are necessary parties.

APPEAL from Cook County. The appellee Cobb, acting as guardian of Mrs. Fannie Hendricks, by virtue of an order of the Probate Court of St. Louis, Mo., made October 24th 1874, adjudging her insane and appointing him her guardian, filed his bill in the court below against Philip F. Scanlan and David B. Lyman, praying for a decree setting aside a deed executed by his ward to Scanlan on February 4th 1871, for a certain lot on Fourth avenue in Chicago, and a deed of trust on the same property executed subsequently by Scanlan to Lyman, as trustee of one Aaron C. Goodman, and also requiring Scanlan to account for the rent of the property. The ground upon which this relief was prayed was that Mrs. Hendricks was insane when she executed the deed to Scanlan.

Scanlan and Lyman answered separately. Scanlan denied the insanity charged and alleged that he was a purchaser in good faith for full value, without any notice that it was claimed Mrs. Hendricks was insane. Lyman denied all knowledge of the alleged insanity of Mrs. Hendricks, and set up that Goodman in good faith loaned Scanlan $4000 on the security of the lot and accepted the deed of trust upon the belief that the title was in Scanlan, as disclosed by the records. The court on hearing the evidence decreed that the deed of Scanlan and the deed of trust to Lyman be set aside; that Scanlan account for the rent of the property, and directed the master in chancery to state and report the account.

The master reported a balance due from Scanlan of $784.17, for which a personal decree was rendered against him. The appeal was prosecuted by Scanlan only.

*Lyman & Jackson*, for appellants.

*Montgomery & Waterman*, for appellee.

The opinion of the court was delivered by

SCHOLFIELD, J.—There are two grounds, at all events, upon which in our opinion the decree should be reversed. 1st. The evidence is clear that Scanlan had no personal knowledge that Mrs. Hendricks was insane when he purchased and paid for the property. He negotiated with Van Wormer, who was acting under a power of attorney, ample in its terms and regular upon its face, and Van Wormer not only failed to communicate to Scanlan that Mrs. Hendricks was insane, but he persists that she was perfectly sane, both when she executed the power of attorney to him and when she acknowledged the deed to Scanlan, and for a long time subsequent thereto. The deed was executed and acknowledged before Lucien B. Adams, a United States commissioner at Springfield in this state, who many years before had been acquainted with Mrs. Hendricks, and he was also of opinion that she was perfectly sane at the time. It does not appear that Scanlan had ever had any personal acquaintance with Mrs. Hendricks prior to his purchase, and the proof is uncontradicted that always before and for some months after she conveyed to him, she was suffered by her friends to travel at her will, and do as she pleased in every respect. The price paid for the property may have been less than its actual worth, but if Van Wormer tells the truth, it was the highest that he could then obtain for it. There was an urgent necessity for immediate sale. It was encumbered by a deed of trust securing a debt for $700, with accruing interest, which was past due, and the creditor was refusing to extend the time of payment. In addition to which there were claims due, which were liens on the property for taxes and special assessments, amounting in the aggregate to $168.68. Reasonable effort was made by advertising both in a daily newspaper and with a prominent real estate dealer, to procure purchasers. Mrs. Hendricks neither had money herself nor was able to procure any to relieve the property from liens otherwise than by its sale. We fail in the entire evidence to discover sufficient grounds to question the good faith of Scanlan in making the purchase. The court below, in directing the account, excluded the consideration of payments made by Scanlan other than those which constituted liens on the property at the time of the purchase. In this there was error, Scanlan having acted in good faith and without culpable negligence, is upon the clearest

principles of justice and morality entitled, at all events, to be reimbursed that which he has paid, and which Mrs. Hendricks has had the benefit of.

Courts of equity interfere to set aside conveyances made by insane persons upon the ground of fraud, it being presumed that the lunatic, by reason of his or her condition has been overreached, and it could not be tolerated that while protecting the lunatic against fraud, they should aid him or her in committing fraud upon others. There is no more reason in good morals why a lunatic should not pay his or her debts lawfully contracted, or those which are clearly and unquestionably contracted for the benefit of the lunatic, than why a sane person should not, and it is equitable and right that a person paying such debts for the lunatic, under an honest belief that he was legally obligated so to do, although it turns out he was mistaken as to the obligation resting upon him, should be re-imbursed. In *Markins* v. *Lightnen*, 18 Ill. 282, the decree was reversed solely upon the ground that the amount of purchase-money paid to the lunatic was not allowed to the other party in stating the account. And the English doctrine and that recognised generally by the courts in this country is, where a purchase from an insane person is made and a conveyance obtained in good faith, for a sufficient consideration, and without knowledge of the insanity, the consideration must be returned before the conveyance will be avoided. And the courts have gone further, and held that where persons apparently of sound mind, and not known by the adverse party to be otherwise, enter into a contract which is fair and bona fide and which is executed and completed, and the property which is the subject of the contract, cannot be restored so as to put the parties in *statu quo*, such contract cannot be set aside either by the alleged lunatic or those who represent him: *Eaton* v. *Eaton*, 8 Vroom 108; *Niel* v. *Morley*, 9 Vesey 478; *Moulton* v. *Camroux*, 2 Exch. 487; *Price* v. *Barrington*, 7 Hare 391; *Carr* v. *Holiday*, 5 Ired. Eq. 167; *Sprague* v. *Duell*, 11 Paige 480; *Loomis* v. *Spencer*, 2 Id. 153; *Young* v. *Stevens*, 48 N. H. 133; *La Rue* v. *Gilkyson*, 4 Barr 375; *Beale* v. *Lee*, 10 Id. 56; *L. C. N. Bank* v. *Moore*, 78 Penna. St. 414.

The items of $28.93 and $22.50, paid by Scanlan to Wright & Terrill, seem to have been honestly due to them from Mrs. Hendricks, and since they were paid upon her order to Wright & Terrill, without notice that she was insane, there can be no question

they were paid in good faith, and they should be allowed. The $2200, paid by Scanlan to Van Wormer on the deferred payments, seem also to have been paid in good faith; and Van Wormer testifies that he paid all that he received, and more, to Mrs. Cobb, the wife of appellee, and sister of Mrs. Hendricks, for Mrs. Hendricks. If Mrs. Hendricks received the benefit of this money either in the payment of debts or in the furnishing of necessaries for her use, there can be no question she should be held responsible for it. But even if she did not receive the benefit of it, it would seem, on the principle recognised by the authorities above referred to, her recourse should be on Van Wormer, and not on Scanlan.

2. The bill discloses, as well as the answer and proofs, that after the execution of the deed by Mrs. Hendricks to Scanlan, Scanlan executed a deed of trust on the property to Lyman, as trustee, to secure a loan of $4000 he had effected from Aaron C. Goodman, on the faith of this security, and to whom he gave his promissory note for the amount. Lyman had but the naked legal title, with the duty to sell on default of payment of the amount secured by his deed, when due, but the substantial equitable interest was in Goodman. The rule in such cases as to parties is thus stated in Story's Equity Pleadings, § 207. "The general rule in cases of this sort is, that in suits respecting trust property, brought either by or against the trustees, the *cestuis que trust* (or beneficiaries), as well as the trustees, are necessary parties, and when the suit is by or against the *cestuis que trust* (or beneficiaries), the trustees also are necessary parties. The trustees have the legal interest, and therefore they are necessary parties. The *cestuis que trust* (or beneficiaries) have the equitable and ultimate interest to be affected by the decree, and therefore they are necessary parties." See also 1 Daniel's Ch. Pleading and Practice, Perkins's ed., 252. The rule has some exceptions, unimportant, however, to the present question.

Goodman was clearly a necessary party, and it was error to deprive him of his security, without giving him an opportunity to be heard. We are by no means satisfied with the proof of the insanity of Mrs. Hendricks at the time she executed the deed to Scanlan. Her three sisters, Mrs. Cobb, wife of appellee, Miss Georgia Mosely, and Mrs. Fowler, as well as the husband of Mrs. Fowler, are quite positive that she was insane as early as 1868. Yet they acted until some time after the execution of the deed, as if they believed she

was sane. They made no efforts to have a conservator or guardian appointed for her. They permitted her to go and come at pleasure, and made no effort to interfere with her control of her property. There is no evidence that either of them, prior to her conveyance to Scanlan (with the exception of Mrs. Cobb, and in this she is contradicted), ever spoke of her to others as insane. Miss Mosely, who discovered from her letters in 1868 that she was insane, and who was afterwards frequently in peril of her life from her, as she says, on the 4th of July 1869, wrote to Mrs. Hendricks's agents at Chicago, Wright & Terrill, informing them of her recent arrival in St. Louis, and of her serious sickness, but then convalescence, requesting them to write to Mrs. Hendricks a full account of the situation of her business in their hands. In other words, requesting them to correspond with, and communicate information to, a person who was, by reason of her insanity, incapable of corresponding or comprehending business matters.

Mr. Fowler, who discovered that she was wild, incoherent, unable or disinclined to any labor, and had difficulty in preventing her from drowning his child, wished her to stay with him as a housekeeper, in consequence of his wife being in ill health.

Mrs. Fowler went with her to an attorney's office to consult with them upon getting possession of the notes executed by Scanlan for the property, and instead of warning them that she was insane, by her presence and silence allowed them to believe Mrs. Hendricks, as by her conversation she appeared to them to be, perfectly rational.

And Mrs. Cobb permitted her to leave her house for Chicago, only going with her to the cars, with no one to watch or look after her, and with no assurance of any proper person to receive her at Chicago, with from one to two hundred dollars on her person.

Mrs. Hendricks entered the Uhlich Home at Springfield, Ill., in 1870; came there unattended, made her own arrangements for remaining there, and left there in the following April, of her own accord, and unattended.

These circumstances are not absolutely incompatible, it is true, with the testimony of these witnesses, that she was all the while incompetent to do any legal act, by reason of her insanity; but their tendency is strongly to discredit the accuracy of their memories and judgments.

There are several other witnesses who corroborate these witnesses, however, in the opinion that Mrs. Hendricks was insane during the

winter of 1870–71, and afterwards. But none of them speak of any test that could be regarded as conclusive as to the strength of her mind in regard to business matters. They speak of her being sometimes dull, sleepy, indolent, careless in her dress, and disgusting and wanton in her attitudes; that she was sometimes irritable and wild in her manner, and incoherent in her speech, and had a strange look in her eyes. Van Wormer and Adams testified that she talked rationally about her business matters, and that when she executed the power of attorney and the deed, in their opinion, she was sane and competent to transact business. Wright & Terrill were her agents for the care and renting of her property in Chicago, and they had communicated with her by letter from 1866 until after the property was conveyed to Scanlan, and they never discovered any symptoms of mental derangement or weakness in her letters. Judge Moody, of St. Louis, conversed with her after the execution of the deed, probably in 1871, just before she became an inmate of the House of the Good Shepherd, and he thought she was perfectly rational. Woodward and a brother of Scanlan had a lengthy conversation with her after she became an inmate of the House of the Good Shepherd, and they discovered no symptoms of insanity. Hale, the clergyman, and Dressen, the physician in charge of the Uhlich Home, discovered nothing indicating insanity in her.

The attorney's office before alluded to as having been visited by her in company with her sister Mrs. Fowler, was that of McConnell & Thornton, at Logansport, Indiana. The visit occurred on the 3d of May 1871, just three months lacking one day after she executed the deed to Scanlan. McConnell testifies that he had never seen or known of her before; that she communicated to him the detail of the transaction to Scanlan, stated her business very lucidly and clearly, and from information communicated by her, from her memory alone, he wrote to Van Wormer, who was also a stranger to him, at his address 514 Pine street, St. Louis, Mo., giving the numbers and amounts, and months when due, of the Scanlan notes, what they had been obtained for, saying that she had been informed that he had turned them over to Mrs. Cobb, who had no authority to receive them, and requesting that he obtain them and send them to her, and that she should hold him personally accountable for the notes. He says her statements were as coherent and intelligent as those of any person for whom he ever transacted business; and from what he observed, her mind was in a perfectly healthy condition.

It would seem the discrepancy between the witnesses might probably be reconciled without serious difficulty, by bearing in mind the undisputed facts as to the manner of life Mrs. Hendricks led prior to 1869, and her unfortunate habits after that period. She was a prostitute and had purchased the property in controversy in 1866 for the purpose of keeping a brothel upon it, which for a time she did. Afterwards she caused the property to be rented, and went to Montana, travelling with a cashier to some bank there as his mistress. From Montana she went to California, and thence to some point on the lower Mississippi. There is no pretence that her evil ways were abandoned in California, and her letters show she was in trouble with the police while on the lower Mississippi. Finally, in June 1869, she was found by her sister, Mrs. Cobb, at the Planter's House in St. Louis, very sick, and, as Mrs. Cobb says, insensible. She had, not unnaturally, contracted in her disorderly life, the vice of drunkenness, and the use of both stimulants and opiates in excess clung to her until some time after the execution of the deed to Scanlan, if indeed she has yet abandoned it. The Uhlich Home at Springfield, of which she was an inmate when she executed the deed to Scanlan, is a reformatory for fallen women, as is also the House of the Good Shepherd, which she entered at St. Louis. Her entrance, as we have before observed, of the Uhlich Home, was voluntary; and although a watch was attempted to be kept upon the movements of its inmates, there was no forcible restraint of their liberty; and it is in proof that Mrs. Hendricks, while there, frequently visited a saloon near by, and was many times under the influence of some degree of intoxication. To what extent she had access to opiates is not clear. The fair presumption from all the circumstances, however, is as frequently as to intoxicating liquors. A mind demoralized by such a life, and stupefied by stimulants and opiates, it would seem, would oftentimes appear to those unfamiliar with the causes operating upon it, as crazed in the highest degree, and yet when the effects of drunkenness would pass off, it might possess, in a business point of view, more than ordinary acuteness and intelligence. It seems to us most probable that what some of the witnesses thought insanity, was in fact, but drunkenness or the fits of melancholy and despondency naturally following it, aggravated perhaps by remorse arising from the recollection of a life of sin and shame. This view will harmonize the statements of witnesses, apparently equally honest and disinterested in the expressions of

different recollections and opinions, while any other presents a conflict to be settled only by determining that some of the witnesses have committed perjury.

The decree is reversed and the cause remanded.

To determine under what limitations the deed of an alleged lunatic can be avoided is of great importance in this country where such implicit credit is reposed in the good faith of record titles.

It has long been a mooted question upon which respectable courts have differed, whether the deed of one who is insane at the time of the execution of it is void absolutely, or merely voidable.

On the one side, Lord HOLT held that all the acts *in pais* of a person *non compos* are void, except his feoffment and livery of seizin, and these are only voidable: *Thompson* v. *Leach*, 3 Salk. 360. The following authorities are also to the effect that the deed of an insane person is void, and may be avoided by the grantor himself: *Estate of Desilver*, 5 Rawle 111; *Rogers* v. *Walker*, 6 Penna. St. 371; *Bensell* v. *Chancellor*, 5 Whart. 371; *Ball* v. *Mannin*, 1 Dow. & Clark 380. So as to a power of attorney: *Dexter* v. *Hall*, 15 Wall. 9.

On the other side, in Lord COKE'S time, it was held that every deed, feoffment or grant, which any man *non compos mentis* makes, is avoidable, but not by himself, but by his privies in blood or representatives: *Beverly's case*, 2 Coke's Reports 568.

So Blackstone says: "Idiots and persons of non sane memory, infants and persons under duress are not totally disabled either to convey or purchase, but *sub modo*. For their conveyances and purchases are voidable, but not actually void: 2 Com. 291. So Chancellor KENT: "By the common law, a deed made by a person *non compos*, is voidable only and not void: 2 Kent Com. 451.

This view has the current of authority in its favor: *Badger* v. *Phinney*, 15 Mass. 359; *Wait* v. *Maxwell*, 5 Pick. 217; *Allis* v. *Billings*, 6 Met. 415; *Arnold* v. *Richmond Iron Works*, 1 Gray 437; *Jackson* v. *Gumaer*, 2 Cowen 552; *Ingraham* v. *Baldwin*, 9 N. Y. 45; *Chew* v. *Bank of Baltimore*, 14 Md. 299; *Crouse* v. *Holman*, 19 Ind. 30; *Somers* v. *Pumphrey*, 24 Id. 231; *Parker* v. *Davis*, 8 Jones (N. C.) 460.

The grounds upon which such a deed is held to be only voidable are: that like the deed of an infant, it is susceptible of future ratification, which removes it beyond the domain of a mere nullity; that the grantor who has been insane, to avoid his own deed shall not be heard to allege his own infirmity; and because no contract valid as to one party can be held utterly void as to the other.

It has been suggested that the authorities could be harmonized by applying the word voidable to feoffments, and livery of seizin, and the word void to deeds. By the ancient law greater importance was given to a feoffment than to a deed on account of its solemnity in the transmutation of a freehold. But the feudal reasons no longer exist, and livery of seizin has been abolished in this country. It is believed that now a deed made in proper form and duly acknowledged, delivered and recorded, is everywhere in this country equivalent to a feoffment with livery of seizin. And as by the common law the feoffment of a person *non compos* was always held merely voidable, no reason is perceived why every deed of such persons should not now be placed upon this ground. But however this may be, it is certain no deed can be avoided where the fact of the lunacy is left a matter of doubt; which doctrine is one of the inferences to be drawn from the principal

case: *Myatt* v. *Walker*, 44 Ills. 485. Such a condition of the mental faculties must exist as would render the subject incapable of acting rationally in the ordinary affairs of life: *Lilly* v. *Waggoner*, 27 Ills. 396; *Honey* v. *Chase*, 52 Me. 305.

In the absence of imposition or undue influence mere mental weakness will not authorize the setting aside of an executed contract, if there be remaining in the grantor sufficient ability to comprehend the meaning, design and effect of his acts: *Aiman* v. *Stout*, 42 Penna. St. 114; *Graham* v. *Pancoast*, 30 Id. 89; *Miller* v. *Craig*, 36 Ills. 109; *Lindsey* v. *Lindsey*, 50 Id. 80. And the burden of proving insanity lies upon the party alleging it: *Jackson* v. *Van Dusen*, 5 Johns. 154; *Grabill* v. *Barr*, 5 Penna. St. 441; *Attorney-General* v. *Parnther*, 3 Brown's Chan. 443. But if such insanity be once proved, or be admitted to have existed at any particular period, but a lucid interval be alleged to have prevailed at the period particularly referred to, then the burden of proof changes to the party alleging such lucid interval, who must show sanity and competence at the time the act was done: *Attorney-General* v. *Parnther*, *supra*; *Hall* v. *Warren*, 9 Vesey Jr. 611; *White* v. *Wilson*, 13 Id. 88; *Harden* v. *Hays*, 9 Penna. St. 151; *Emery* v. *Hoyt*, 46 Ills. 258; *Menkins* v. *Lightner*, 18 Id. 282.

The principal case is especially important in that it emphatically announces the doctrine that where a purchaser takes a conveyance from a person apparently sane in good faith, for value and without notice, such conveyance cannot be set aside by any person without his being placed in his former condition. Such a rule has its foundation in natural justice as well as in reason and authority. It preserves the analogies of the law, by placing a person laboring under the disability of lunacy as to his conveyance upon the same footing as a person making a conveyance while under the disability of infancy. And above all, it closes the door to great frauds, which might easily otherwise be perpetrated on the part of those unscrupulous enough to take advantage of the lunacy, either real or pretended, of a relative, and make it the occasion to wholly deprive an honest purchaser of his title and of the consideration he paid for it.

In addition to the authorities given in the opinion upon this point may be cited, as sustaining the court, *Selby* v. *Jackson*, 6 Beav. 200; *Sergeson* v. *Sealey*, 2 Atkyns 412; *Beavan* v. *McDonnell*, 9 Exch. 309; 1 Dart on Vendors 6; 1 Story's Eq. Jur., § 228.

The cases of *Gibson* v. *Soper*, 6 Gray 279, and *Hovey* v. *Hobson*, 53 Maine 451, are against the doctrine of the principal case, but they do not represent the prevailing rule, either in this country or in England.

C. H. W.

---

## *Supreme Court of Tennessee.*[1]

### E. J. EASON *v.* THE STATE.

In criminal, as well as in civil cases, the bill of exceptions must be made up and signed at the term at which the trial takes place, in order to secure certainty as to the facts which occurred at the trial.

The responsibility of selecting jurors is impossd upon the court and the duty

[1] This opinion, for which we are indebted to FREEMAN, J., was delivered in 1873, but has not been reported.—ED. AM. LAW REG.